

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Blackwood, NJ, Employer**

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**Docket No. 09-732  
Issued: October 21, 2009**

*Appearances:*

*Thomas R. Uliase, for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 22, 2009 appellant filed a timely appeal of March 21 and September 5, 2008 decisions of the Office of Workers' Compensation Programs denying her claim for an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has more than a 13 percent impairment of the left upper extremity, for which she received schedule awards.

On appeal, appellant, through her attorney, asserts that Dr. Gregory Maslow, a Board-certified orthopedic surgeon and impartial medical examiner, failed to provide range of motion measurements for the left wrist, hand, fingers and thumb, did not properly assess pinch and grip strength, failed to provide pinch and grip strength measurements and did not specify the thumb joints to which range of motion measurements referred.

## **FACTUAL HISTORY**

The Office accepted that on or before June 15, 2002 appellant, then a 49-year-old retail sales associate, sustained left trigger thumb due to repetitive motion of the left hand in the performance of duty. After a brief absence, she returned to limited-duty work in September 2002.

On April 1, 2003 appellant underwent a release of stenosing tenosynovitis of the left thumb, palmar fasciectomy, excision of the pullet and radical excision of a nodular mass at the ulnar collateral ligament at the metacarpophalangeal joint. She returned to limited duty on April 21, 2003. Appellant required physical therapy through January 2004 due to incisional pain. She returned to full-time unrestricted duty effective January 22, 2004.

On May 25, 2005 appellant claimed a schedule award. She submitted a January 5, 2005 impairment rating from Dr. David Weiss, an attending osteopathic physician, who provided a history of injury and treatment, noting that appellant was right hand dominant. Appellant had reached maximum medical improvement as of that day. She stated that her pain level was 4 to 6 out of 10. On examination of the left thumb, Dr. Weiss found full metacarpophalangeal and interphalangeal extension and flexion and full palmar and radial abduction. Appellant was “unable to touch the base of the fifth metacarpophalangeal joint and lack[ed] four cm [centimeters] to closure.” There was marked carpometacarpal joint tenderness with a positive grind test. Dr. Weiss used a hand dynamometer to obtain grip strength levels of 28 kilogram (kg) on the right and 10 kg on the left. Pinch key testing was at 10 kg on the right and 5.5 kg on the left. Dr. Weiss diagnosed stenosing tenosynovitis of the left thumb, a tumor mass of the left thumb, carpometacarpal joint arthropathy to the left hand, status post left thumb release of stenosing tenosynovitis with palmar fasciectomy and radial excision of the pulley. Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*). Dr. Weiss opined that appellant had a 30 percent impairment of the left upper extremity due to pinch strength deficit and a 3 percent impairment of the left upper extremity due to pain, according to Table 18-1, page 574.<sup>1</sup> He added the two percentages to equal a 33 percent permanent impairment of the left upper extremity.

On April 15, 2005 the Office referred Dr. Weiss’ report to an Office medical adviser for review. In an April 26, 2005 report, the Office medical adviser opined that, according to Table 16-33, page 509,<sup>2</sup> appellant’s pinch test strength was within normal limits for a nondominant

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<sup>1</sup> Table 18-1, page 574 of the fifth edition of the A.M.A., *Guides* is entitled “Algorithm for Rating Pain-Related Impairment in Conditions Associated with Conventionally Ratable Impairment.”

<sup>2</sup> Figure 16-33, page 509 of the fifth edition of the A.M.A., *Guides* is entitled “Average Strength of Lateral Pinch by Occupation in 100 Subjects.”

hand. He opined that, according to Table 16-18, page 499<sup>3</sup> and Table 16-29, page 507,<sup>4</sup> “20 percent x 40 = 8 percent hand,” equaling a 7 percent impairment of the left upper extremity.

By decision dated July 20, 2005, the Office granted appellant a schedule award for a seven percent permanent impairment of the left upper extremity. Following additional development, by decision dated November 9, 2005, the Office set aside the July 20, 2005 decision and remanded the case to obtain a second opinion examination and schedule award rating.

On January 5, 2006 the Office obtained a second opinion report from Dr. Zohar Stark, a Board-certified orthopedic surgeon. On examination of the left hand, Dr. Stark noted reduced pinch strength, tenderness on palpation of the metacarpal joint of the thumb and a loss of two cm thumb abduction. He opined that these impairments were not related to the accepted left trigger thumb or surgery.<sup>5</sup> In a February 21, 2006 supplemental report, Dr. Stark opined that appellant had 10 percent impairment of the left upper extremity due to reduced pinch strength and 1 percent impairment due to restricted thumb adduction. He was uncertain if the impairments were work related.

By decision dated March 8, 2006, the Office denied modification, based on Dr. Stark’s opinion. Following additional development, by decision dated June 7, 2006, the Office set aside its March 8, 2006 decision, finding a conflict of medical opinion between Dr. Stark, for the government and Dr. Weiss, for appellant.

On remand of the case, on August 14, 2006, the Office referred appellant, the medical record and a statement of accepted facts to Dr. George P. Glenn, Jr., a Board-certified orthopedic surgeon. It included bypass information from the Physician’s Directory System (PDS) for approximately 12 physicians,<sup>6</sup> indicating that they were not selected as Dr. Glenn had already been appointed. Dr. Glenn submitted a September 12, 2006 report finding 13 percent impairment of the left upper extremity according to the A.M.A., *Guides* due to pain, restricted left thumb adduction and diminished pinch strength. In a November 5, 2006 report, an Office medical adviser concurred with Dr. Glenn’s opinion.

By decision dated November 30, 2006, the Office granted appellant a schedule award for an additional 6 percent impairment of the upper extremity, in addition to the 7 percent previously awarded, for a total of 13 percent.

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<sup>3</sup> Table 16-18, page 499 of the fifth edition of the A.M.A., *Guides* is entitled “Maximum Impairment Values for the Digits, Hand, Wrist, Elbow and Shoulder Due to Disorders of Specific Joints or Units.”

<sup>4</sup> Table 16-29, page 507 of the fifth edition of the A.M.A., *Guides* is entitled “Digit Impairment Due to Constrictive Tenosynovitis.”

<sup>5</sup> In a February 9, 2006 report, an Office medical adviser concurred that appellant had no work-related impairment of the left upper extremity.

<sup>6</sup> The bypass information was presented as computer screen captures that do not show the entire field containing physician contact data.

In a December 8, 2006 letter, appellant requested a hearing, held May 10, 2007. At the hearing, counsel asserted that Dr. Stark's report was not rationalized and should be disregarded. Counsel also contended that Dr. Glenn could not serve as impartial medical examiner as the Office did not properly utilize the Physicians Directory System in his selection. By decision dated July 17, 2007, the Office set aside the November 30, 2006 decision, finding that the Office did not properly utilize the PDS in selecting Dr. Glenn. The Office directed the appointment of a new impartial medical examiner.

On remand of the case, the Office appointed Dr. Maslow, a Board-certified orthopedic surgeon, as impartial medical examiner. In a March 6, 2008 report, Dr. Maslow reviewed the medical record and a statement of accepted facts. On examination of the left thumb, he found tenderness at the volar aspect of the metacarpophalangeal joint, a loss of 10 degrees radial abduction, a loss of two cm radial adduction, a slightly diminished power grip due to pain and diminished pinch strength when compared to the right hand. Referring to the A.M.A., *Guides*, Dr. Maslow found one percent impairment of the thumb for restricted radial adduction according to Table 16-8b, page 459.<sup>7</sup> For loss of radial abduction, he found two percent impairment of the thumb according to Table 16-8a, page 459.<sup>8</sup> Dr. Maslow combined the one percent and two percent impairments to equal three percent impairment of the thumb. According to Table 16-1, page 438,<sup>9</sup> 3 percent impairment of the thumb equaled 1 percent impairment of the hand or, according to Table 16-2, page 439,<sup>10</sup> 1 percent impairment of the upper extremity. Dr. Maslow found that, according to Table 16-34, page 509, the loss of pinch strength equaled 10 percent impairment of the upper extremity.<sup>11</sup> He opined that appellant's "main problem at the hand [was] a painful scar," equaling a two percent impairment of the upper extremity. Dr. Maslow added the 10, 1 and 2 percent impairments to equal a 13 percent impairment of the left upper extremity.

On March 13, 2008 the Office referred Dr. Maslow's report to an Office medical adviser for calculation of a schedule award. In a March 14, 2008 report, an Office medical adviser concurred with Dr. Maslow's impairment rating and application of the A.M.A., *Guides*.

By decision dated March 21, 2008, the Office found that appellant did not have more than the 13 percent impairment previously awarded, based on Dr. Maslow's opinion as the weight of the medical evidence.

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<sup>7</sup> Table 16-8b, page 459 of the fifth edition of the A.M.A., *Guides* is entitled "Thumb Impairment Values Due to Lack of Radial Abduction and to Ankylosis."

<sup>8</sup> Table 16-8a, page 459 of the fifth edition of the A.M.A., *Guides* is entitled "Thumb Impairment Values Due to Lack of Radial Abduction and to Ankylosis."

<sup>9</sup> Table 16-1, page 438 of the fifth edition of the A.M.A., *Guides* is entitled "Conversion of Impairment of the Digits to Impairment of the Hand."

<sup>10</sup> Table 16-2, page 439 of the fifth edition of the A.M.A., *Guides* is entitled "Conversion of Impairment of the Hand to Impairment of the Upper Extremity."

<sup>11</sup> Table 16-34, page 509 of the fifth edition of the A.M.A., *Guides* is entitled "Upper Extremity Joint Impairment Due to Loss of Grip or Pinch Strength."

In an April 3, 2008 letter, appellant requested a hearing, held July 16, 2008. At the hearing, appellant's attorney asserted that Dr. Maslow could not serve as impartial medical examiner as he relied on Dr. Glenn's disqualified report. Also, Dr. Maslow provided no measurements for left thumb abduction, adduction, grip strength or pinch strength. Counsel asserted that there was no objective basis for Dr. Maslow's schedule award rating. At the hearing, appellant submitted her notes on Dr. Maslow's examination, asserting that he tested her pinch and grip strength by having her grasp a handle of a rubber hammer and squeeze his fingers.

By decision dated and finalized September 5, 2008, an Office hearing representative affirmed the previous decision finding a 13 percent impairment of the left upper extremity, based on Dr. Maslow's opinion as the weight of the medical evidence. The hearing representative found that the Office was not required to exclude Dr. Glenn's report or err by providing it to Dr. Maslow.

### **LEGAL PRECEDENT**

The schedule award provisions of the Federal Employees' Compensation Act<sup>12</sup> provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>13</sup>

The standards for evaluation of the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.<sup>14</sup> Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedure for determining impairments of the upper extremities due to pain, discomfort, loss of sensation, or loss of strength.<sup>15</sup>

### **ANALYSIS**

The Office accepted that appellant sustained a left trigger thumb requiring surgical release. On July 20, 2005 it issued a schedule award for seven percent permanent impairment of the left upper extremity. This award was based on the January 5, 2005 report of Dr. Weiss, an attending osteopathic physician, as interpreted by an Office medical adviser. On November 30, 2006 the Office granted appellant a schedule award for an additional six percent impairment of

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<sup>12</sup> 5 U.S.C. §§ 8101-8193.

<sup>13</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>14</sup> *See Paul A. Toms*, 28 ECAB 403 (1987).

<sup>15</sup> A.M.A. *Guides*, Chapter 16, "The Upper Extremities," pp. 433-521 (5<sup>th</sup> ed. 2001).

the left upper extremity, based on the September 12, 2006 report of Dr. Glenn, a Board-certified orthopedic surgeon and impartial medical examiner. Appellant continued to claim a greater percentage of permanent impairment than that awarded.

The Office disqualified Dr. Glenn as he was not properly selected.<sup>16</sup> On March 6, 2008 it obtained a second impartial medical opinion from Dr. Maslow, a Board-certified orthopedic surgeon, who found that appellant had 13 percent impairment of the left upper extremity, 1 percent for restricted radial adduction of the thumb according to Table 16-8b of the A.M.A., *Guides*, 2 percent for loss of radial abduction according to Table 16-8a, 10 percent for diminished pinch strength according to Table 16-34 and 2 percent for pain according to an unspecified grading scheme. Based on Dr. Maslow's opinion, the Office affirmed the 13 percent schedule award by decisions dated March 21 and September 5, 2008.

On appeal, appellant, through her attorney, asserts that Dr. Maslow's report is insufficient to represent the weight of the medical evidence as he failed to provide measurements for ranges of motion of the left thumb, pinch strength or grip strength. He also did not specify the joints in which he observed the restricted motion. The Board finds that Dr. Maslow's report is incomplete and requires clarification.

The medical evidence required for a schedule award the evaluation should include a detailed description of the impairment which contains, where applicable, measurements of restricted motion, deficits in strength or sensation or other pertinent description of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.<sup>17</sup> Dr. Maslow's description of appellant's impairments is incomplete. He calculated impairments for restricted radial abduction and radial adduction of the thumb, but provided neither measurement. Dr. Maslow assessed an impairment for diminished pinch strength, but did not provide the kilogram rating for this measurement. Also, he noted a two percent impairment due to pain but did not refer to a specific table or grading scheme of the A.M.A., *Guides* to correlate his clinical findings.

As the Office undertook to obtain an impartial medical specialist's opinion, it is now obligated to obtain a sufficiently reasoned report as to the appropriate percentage of permanent impairment of the left upper extremity.<sup>18</sup> The Office should request a supplemental report from Dr. Maslow regarding the specific measurements on which he based his schedule award

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<sup>16</sup> The Board notes that the Office did not err by failing to exclude Dr. Glenn's report from the record as he was improperly selected. The Office's procedures require excluding a medical report from the record if leading questions were posed to a second opinion or impartial physician. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.6(d) (September 1995). See also Chapter 2.810.13. *Brenda C. McQuiston*, 54 ECAB 816 (2003). There is no evidence of record, and appellant does not contend, that the Office posed improper questions to Dr. Glenn. Therefore, the Board finds that the Office did not err by including Dr. Glenn's report in the record.

<sup>17</sup> A.L., 60 ECAB \_\_\_\_ (Docket No. 08-1730, issued March 16, 2009).

<sup>18</sup> See, e.g., *Elmer K. Kroggel*, 47 ECAB 557 (1996) (the Board remanded the case for the Office to obtain a supplemental report from the impartial medical specialist).

assessment. He should also specify those portions of the A.M.A., *Guides* relevant to his impairment rating. Following this and such other development deemed necessary, the Office shall issue an appropriate decision in the case.

**CONCLUSION**

The Board finds that the case is not in posture for a decision. The case will be remanded to the Office for further development.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 5 and March 21, 2008 are set aside, and the case remanded to the Office for further development consistent with this decision.

Issued: October 21, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board